

Hemp Industry Bill 2019

Serial No. 91

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights has been prepared in accordance with the Thirteenth Assembly Sessional Orders (Part 12.3) as adopted on 20 March 2018.

Hemp Industry Bill 2019

As determined below the introduced Hemp Industry Bill 2019 ('the Bill') is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the introduced Bill

The Bill before the Legislative Assembly creates the authorising environment for the regulation of low Tetrahydrocannabinol (THC) *Cannabis spp.* (less than or equal to 1 % THC) for food, fibre and seed production uses. If consumed Low THC hemp foods have no psycho-active effects on individuals.

This authorising environment is to be achieved through:

- Establishing a licencing regime that will enable:
 - the lawful possession, cultivation, processing or supply of industrial hemp for the commercial production of industrial hemp products including food, fibre and seed; and
 - the lawful possession, cultivation, processing or supply of industrial hemp for scientific research, instruction, analysis or study.
- Setting out how the responsibility and accountability for specified administrative powers of the Act are shared between the Chief Executive Officer of the responsible regulatory agency and the Commissioner of Police.
- Providing authorised inspectors under the Act with appropriate powers of entry, inspection and seizure to allow for the enforcement of necessary provisions to ensure compliance.
- Allowing for the right of review by persons affected by administrative decisions made under the Act.

- Providing the right of person under the Act to seek compensation to ensure any acquisition of property is under just terms.
- Providing for offences and penalties for contravening specified provisions of the Act.
- Providing exemptions where applicable to the *Misuse of Drugs Act* to allow for licenced persons to undertake activities in accordance with the new Act.

The introduced Bill is new legislation, and if passed by the Legislative Assembly, will allow the Northern Territory (NT) to participate in and compete with other Australian jurisdictions on the development of a lawful industrial hemp industry, and do so without unreasonable impediments.

Human rights implications

This introduced Bill engages the following rights:

- Presumption of innocence, contained in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR); and
- Privacy and reputation, contained in Article 17 of the ICCPR.

1. Presumption of innocence

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to presumption of innocence is also a fundamental common law principle.

When ‘strict liability’ or ‘absolute liability’ applies to an offence, the prosecution is only required to prove the physical elements of an offence, not the fault elements, beyond reasonable doubt in order for the defendant to be found guilty. Where strict liability applies the defence of honest and reasonable mistake of fact is available to the defendant (see section 43AX of the Criminal Code). Where absolute liability applies this defence is not available.

Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of their duties and obligations. Absolute liability is used very rarely. Strict and absolute liability can be considered a limitation of the presumption of innocence, because the defendant can be found guilty, or an element of an offence can be proven, without the prosecution being required to prove fault.

Strict and absolute liability provisions will not necessarily be inconsistent with the presumption of innocence, provided that removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective.

Whether a strict or absolute liability provision impermissibly limits the right to the presumption of innocence will depend on the circumstances of the case and the particular justification for an offence or an element of an offence being strict or absolute liability.

Absolute liability offences

The introduced Bill contains a single provision where an absolute liability offence element may exist under a future Regulation:

- Clause 44(2)(f)(i) raises the possibility for absolute or strict liability requirements to be applied to an element or elements of an offence against a Regulation, but with a penalty not exceeding 50 penalty units.

A determination of whether or not absolute (or strict) liability will be applied to an element of an offence under regulations, to be developed in support of the new Act, will be a matter for consideration by the Solicitor for the Northern Territory's Legal Policy Unit.

As stated earlier, whether a strict or absolute liability provision impermissibly limits the right to the presumption of innocence, it will depend on the circumstances of the case, including the particular justification for an offence (or an element of an offence) being strict or absolute liability.

Strict liability offences

The introduced Bill contains eight clauses where the application of strict liability is applied. These are as follows:

1. Clause 16(1) makes it an offence for a person who holds a licence issued under the Act to intentionally engage in conduct that results in a contravention of a condition (imposed under section 15 of the Act) of that licence. Clause 16(2) ensures strict liability applies in relation to 16(1)(a) (i.e. whether or not the person held a licence); and 16(1)(b) (i.e. whether or not the licence was subject to a condition). The purpose of clause 16(1) is to ensure that only lawful and approved conduct is undertaken by those granted with both the privilege and responsibility of possessing an otherwise restricted substance under the *Misuse of Drugs Act*.
2. Clause 26 makes it a requirement for an inspector appointed under the Act to have returned his/her identity card to the CEO within 21 days of ceasing to be an inspector. Clause 26(2) ensures strict liability applies in relation to return of the identity card (i.e. the authorised officer either did, or did not return the card to the CEO).

3. Clause 27(1) provides an inspector with the power to require a person, who the inspector believes on reasonable grounds is about to commit an offence (or is committing an offence, or has committed an offence), to provide the inspector with his/her name and address. Under clause 27(2) a person commits an offence if he/she contravenes such a requirement (i.e. fails to give his/her name and address or provides the inspector with false or incorrect information). Clause 27(3) ensures strict liability applies in relation to the contravention (i.e. the person either did, or did not provide his/her name and address; or did, or did not provide the correct information). The purpose of clause 27(2) is to provide a deterrent to persons seeking to act in a manner to hinder or obstruct investigations carried out under the Act.
4. During the undertaking of a lawful entry by an inspector, clause 29(2) makes it an offence for a person, given a requirement by the inspector under clause 29(1)(g) (i.e. to answers questions asked by the inspector; and/or produce documents to the inspector; and/or to give the inspector reasonable help to exercise powers under the Act), not to take reasonable steps to comply with such a requirement. Clause 29(3) applies strict liability as to whether or not the person complied with the requirement asked of him/her by the inspector with respect to matters covered in 29(1)(g). The purpose of offence clause 29(2) is to provide a deterrent to persons seeking to act in a manner to hinder or obstruct investigations into possible breaches carried out under the Act.
5. Clause 32(1) makes it an offence for a person to intentionally obstruct (including hinder or resist) an inspector or police officer from acting in an official capacity, if the person has knowledge of that circumstance (i.e. that the person is an inspector or police officer). Clause 32(2) applies strict liability in determining whether or not the person acting in an official capacity is an appointed inspector or police officer, or is not. The purpose of offence clause 32(1) is to provide a deterrent to persons seeking to act in a manner to hinder or obstruct investigations into possible breaches carried out under the Act.
6. Clauses 33(1) and 33(2) makes it an offence for a person to intentionally give information (including in a document) to the CEO, an inspector or a police officer, if the information is knowingly misleading and the person knows that the recipient(s) listed above are acting in their official capacity. Clause 33(3) applies strict liability in determining whether or not the person acting in an official capacity is the CEO, an inspector or a police officer, or are not. The purpose of offence clauses 33(1) and 33(2) is to provide a deterrent to persons seeking to act in a manner to hinder or obstruct investigations into possible breaches carried out under the Act.

7. Clause 35(1) makes it an offence for a person to intentionally disclose confidential information, obtained in the course of performing functions connected with the administration of the Act, unless the person has been authorised to do so. Clause 35(2) applies strict liability in determining under 35(1)(a) whether or not the person has obtained information in the course of performing functions connected with administering the Act. The purpose of offence clause 35(1) is to provide a deterrent to persons seeking to disclose confidential information without authorisation to do so, or such disclosure is not in accordance with circumstances outlined in clause 35(3).
8. Clause 44(2)(f)(i) raises the possibility for absolute or strict liability requirements to be applied to an element or elements of an offence against a Regulation, but with a penalty not exceeding 50 penalty units.

As mentioned, the elements to which strict liability applies are those where the need to prove fault is not required, although the prosecution must prove the physical elements of the offence beyond reasonable doubt. As illustrated above, the elements in this Bill to which strict liability applies are those which are straight-forward, and where it can reasonably be expected that a person is aware of their duties and obligations (e.g. the person was a holder of a licence with established conditions; whether or not the person was dealing with an inspector or police officer etc.). Notwithstanding this, the defence of mistake of fact is available to the accused for all offences involving strict liability.

Offences where strict or absolute liability apply are not punishable by imprisonment. They are punishable by fines which are considered consistent with similar provisions across the statute book.

The strict liability offences in the Bill are regulatory in nature and act as a deterrent to behaviour and actions that would otherwise compromise the lawful regulation and operation of an industrial hemp industry. They are compatible with Article 14(2) of the ICCPR, as they pursue a legitimate objective and are reasonable and proportionate to achieving that objective.

2. Privacy and reputation

The prohibition on interference with privacy is impacted by some of the provisions in the introduced Bill. This is in relation to an inspector's powers of entry to premises or search of persons or premises. It is also impacted by provisions that involve the collection, storage, security, use, disclosure or publication of personal information; and provisions that regulate information held on a public register.

The UN Human Rights Committee has not defined 'privacy'. However it should be understood that to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises, as falling within the sphere of impacting on an individual's autonomy. This does not exclude those intrusions that are authorised by law and are necessary in a democratic society in the interests of national security, public order, the protection of rights and freedom of others, or other legitimate objectives in appropriate circumstances.

Clauses 28 and 29 provide an inspector with designated powers of entry and ability to undertake inspections and related activities. Under Clause 28 an inspector may, at any reasonable time, enter a place occupied by a licensee, other than a place used as a residence, to determine whether the licensee is complying with a licence or this Act. A place of residence can only be entered under warrant and in the accompaniment of police. On entering the premise inspectors can take copies of, or extracts from, documents on the place; samples for analysis; photographs; seize materials; ask questions and request documents.

Clause 39 also requires the CEO to keep a register of registered persons and locations on which Industrial hemp production and research activities are occurring. This information will be shared with police. The CEO may make available certain information in the register for public disclosure, on application by a prescribed person (or person of a prescribed class authorised by the CEO). This is necessary allow for the interstate movements of germplasm or samples.

The *Information Act* provides for access to information held by government and sets out a legally enforceable mechanism for ensuring this access. The right to access is subject to certain limitations that ensure that sensitive information, including information unreasonably affecting personal privacy is properly protected. Adoption of this legislation provides further remedy to any limit on a person's privacy by a provision in this Bill.

The Bill is compatible with article 17 of the ICCPR as the provisions are authorised by law and are not arbitrary.

Conclusion

This introduced Bill engages the following human rights:

1. Presumption of innocence, contained in Article 14(2) of the ICCPR; and
2. Privacy and reputation, contained in Article 17 of the ICCPR.

However as outlined in this statement, the introduced Bill is compatible with human rights as any limitations imposed are reasonable, necessary and proportionate.